

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAVOOD KHADEMI,

Plaintiff,

v.

NORTH KERN STATE PRISON, et al.,

Defendants.

Case No. 1:21-cv-01261-DAD-SKO (PC)

**ORDER DENYING MOTION TO SET  
ASIDE THE INFORMATION**

(Doc. 13)

**ORDER DENYING MOTION TO APPOINT  
EXPERT AND INVESTIGATOR AND/OR  
ATTORNEY**

(Doc. 14)

Plaintiff is proceeding *pro se* and *in forma pauperis* this civil rights action pursuant to 42 U.S.C. § 1983.

**I. INTRODUCTION**

On November 4, 2021, Plaintiff filed a “Notice of Motion to Set Asid[e] the Information Pursu[a]nt to the (Fed. R. Civ. P.) 230(2) Rule 23.” (Doc. 13.) On December 16, 2021, Plaintiff filed a “Notice of Motion for Appointment of an Expert Psychologist (Fronsic) and an Appointment of an Investigator or Appointment of an Attorney Not Volunteer but Instea[d] Specialized from Federal Gov Pursuant to 28 U.S.C. § 1915(e)(1).” (Doc. 14.)

**II. MOTION TO SET ASIDE THE INFORMATION**

In his motion, which only refers to setting aside an information in the title, Plaintiff contends he was assaulted on May 28, 2021, by Sergeant Franco and that “Blanco and Mattcaff

and [illegible]” failed to protect him. (Doc. 13 at 1.) Plaintiff contends he was not provided with a medical examination until one week later. (*Id.*) He further contends that “Defendants Sanchez property officer and Lutenent I. Gomez lost” his phone and property that included “very important patent (utility) inv[e]ntion information.” (*Id.*) Plaintiff filed a grievance, but North Kern State Prison officials claimed he refused to sign it, noting there was no orientation “given to any inmate upon arrival.” (*Id.*) Although less than clear, Plaintiff further contends prison officials “knowingly did not mon[itor] any names of th[ose] transporting deputys which had” Plaintiff in custody “from Placer County Jail” despite filing an incident report involving battery on a peace officer, leading to Plaintiff’s inability to subpoena the transportation deputies for his “RVR hearing.” (*Id.*) Plaintiff contends that misconduct led to his being found guilty and involuntarily medicated. (*Id.* at 1-2.) Plaintiff claims his case “warrants the imminent hearing by this Court” because his “utility patent inv[e]ntion is in danger of [being] stolen by one at any time while the United States of American is the real ben[e]fic[i]al party from this inv[e]ntion.” (*Id.* at 2.) Plaintiff contends “the SVSP officials C/Os used unnecessary force on 9/23/2021” when they entered his cell and “stol[e] some other written inv[e]ntion (utility) patent” documentation he had been working on for the previous six months. (*Id.*) Plaintiff sustained “all injury’s and the medical did not even [take] the mask off Plaintiff Khademi head to examin[e] him for injuries.” (*Id.*) Plaintiff contends he “will sustain” irreparable injury “which is imminent and in danger of loss of both while the business and all income and other factors are relevant.” (*Id.*)

To the extent Plaintiff seeks “to set aside the information,” the Court notes no information has been filed in the instant action, and there is nothing to set aside in this proceeding. Even assuming Plaintiff is referring to an information in a current state court proceeding, such a motion is filed in the trial court pursuant to California Penal Code section 995, not in a federal civil rights action filed in the district court. In a habeas corpus action, generally the writ of habeas corpus will not extend to one awaiting trial unless special circumstances exist to reveal an absence of state processes effective to protect a federal right. *See Ex parte Royall*, 117 U.S. 241, 245–254 (1886); *Fay v. Noia*, 372 U.S. 391, 420 (1963), overruled in part by *Wainwright v. Sykes*, 433 U.S. 72 (1977) and *Coleman v. Thompson*, 501 U.S. 722 (1991). Federal courts will not interfere

1 with pending state criminal proceedings unless the habeas corpus petitioner has exhausted all  
2 state court remedies with respect to the claim raised. *See Mannes v. Gillespie*, 967 F.2d 1310,  
3 1311–1312 (9th Cir. 1992).

4 To the extent Plaintiff seeks an evidentiary hearing concerning the loss of his phone and  
5 documents related to a patent, the loss of Plaintiff’s property—a phone and written  
6 documentation—is in no way related to the claims asserted in his pending complaint. In any  
7 event, a request for an evidentiary hearing is premature where Plaintiff’s complaint has not yet  
8 been screened and no defendant has appeared in the action.

9 In sum, there is no information to set aside, an evidentiary hearing is premature, and the  
10 subject of the requested evidentiary is unrelated to the circumstances giving rise to Plaintiff’s  
11 complaint.

12 **III. MOTION FOR THE APPOINTMENT OF A PSYCHOLOGICAL EXPERT**  
13 **AND AN INVESTIGATOR OR AN ATTORNEY**

14 Plaintiff’s motion includes many of the same contentions, (*see* Doc. 14 at 1-2), which are  
15 included in his other motion described above, along with several contentions that are improbable.  
16 For example, Plaintiff contends the “system” blames him for being “a party or planned for  
17 [illegible] attack of US oil pipe lines in the county jail” (*id.* at 3), that they “wanted to accuse  
18 Plaintiff to work hard for U.S. Gov. in the past knowing many senators and been very depressed  
19 on the day that Prince Philip in United Kingdom had past away on or about the April 2021 while  
20 it was live in Fox TV (*id.*), and that U.S. intelligence “wanted to accuse Plaintiff of having some  
21 contact with U.S. Gov at the time of Hormoz attack of US Drown in 2019-2020” (*id.*). Plaintiff  
22 further alleges inadequate medical care during his incarceration at Salinas Valley State Prison.  
23 (*Id.* at 4.)

24 Plaintiff concludes “[t]hese indications warrants appointment of an expert forensic  
25 psychologist and the appointment of an attorney in the Gov expenses of Appointment of an  
26 investigator in the state expenses of federal expenses.” (*Id.*) Plaintiff provides a copy of an  
27 Incident Report concerning events of May 28, 2021, Log Number 22962, and a CT report  
28 following an examination of November 10, 2021. (*Id.* at 5-8.)

1 Plaintiffs do not have a constitutional right to appointed counsel in section 1983 actions.  
2 *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *rev'd in part on other grounds*, 154 F.3d  
3 952, 954 n.1 (9th Cir. 1998). Nor can the Court require an attorney to represent a party under 28  
4 U.S.C. § 1915(e)(1). *See Mallard v. U.S. Dist. Court*, 490 U.S. 296, 304-05 (1989). In  
5 “exceptional circumstances,” however, the Court may request the voluntary assistance of counsel  
6 pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525.

7 Given that the Court has no reasonable method of securing and compensating counsel, the  
8 Court will seek volunteer counsel only in extraordinary cases. In determining whether  
9 “exceptional circumstances exist, a district court must evaluate both the likelihood of success on  
10 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the  
11 complexity of the legal issues involved.” *Rand*, 113 F.3d at 1525 (internal quotation marks &  
12 citations omitted).

13 In the present case, the Court does not find the required exceptional circumstances. Even  
14 assuming Plaintiff is not well versed in the law and has made serious allegations that, if proven,  
15 would entitle him to relief, Plaintiff’s case is not exceptional. The Court is faced with similar  
16 cases almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to his *pro se*  
17 status and his incarceration, the test is not whether Plaintiff would benefit from the appointment  
18 of counsel. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). The test is whether  
19 exceptional circumstances exist and here, they do not. Indeed, circumstances common to most  
20 prisoners, such as lack of legal education and limited law library access, do not establish  
21 exceptional circumstances that would warrant a request for voluntary assistance of counsel.  
22 Plaintiff’s complaint asserts an Eighth Amendment claim for excessive force, an Eighth  
23 Amendment claim for a failure to provide adequate medical care, and a claim for retaliation.  
24 (Doc. 1.) It is simply not one involving exceptional circumstances.

25 At this stage in the proceedings, the Court cannot make a determination on whether  
26 Plaintiff is likely to succeed on the merits because his complaint has not yet been screened. 28  
27 U.S.C. § 1915A. Nevertheless, based on a review of the record in this case, the Court does not  
28 find that Plaintiff cannot adequately articulate his claims.

Regarding Plaintiff's motion for the appointment of an expert psychologist, district courts have the authority to appoint expert witnesses. *See Students of Cal. Sch. for the Blind v. Honig*, 736 F.2d 538, 549 (9th Cir.1984) (citing Federal Rule of Evidence 706), *vacated on other grounds*, 471 U.S. 1484 (1985). An expert witness may testify to help the trier of fact understand the evidence or determine a fact in issue. Fed. R. Evid. 702. Under Rule 706(a), the Court may on its own motion or on the motion of another party, appoint an expert witness. Fed. R. Evid. 706(a). The decision whether to appoint a neutral expert is discretionary. *See Claiborne v. Blauser*, 934 F.3d 885, 889 (9th Cir. 2019) (citing *McKinney v. Anderson*, 924 F.2d 1500, 1511 (9th Cir. 1991) [court held district court had discretion to appoint an expert witness in prisoner civil rights case with complex scientific evidence]). Appointment of an expert witness may be appropriate when "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or decide a fact in issue...." *Torbert v. Gore*, No. 14CV2911-BEN-NLS, 2016 WL 3460262, at \*2 (S.D. Cal. June 2016); *see also Armstrong v. Brown*, 768 F.3d 975, 987 (9th Cir. 2014) ("[a] Rule 706 expert typically acts as an advisor to the court on complex scientific, medical, or technical matters").

Before appointing an expert witness under Rule 706, the Court must consider several substantive factors. The Court must analyze whether: (1) expert testimony is necessary or significantly useful for the trier of fact to comprehend a material issue in a case; (2) the moving party has produced some evidence, admissible or otherwise, that demonstrates a serious dispute that could be resolved or understood through expert testimony; (3) certain circumstances or conditions of a party limit the effectiveness of the adversary process to result in accurate fact finding; and (4) the legal basis of plaintiff's claims entitles him to special consideration by the Court. *Gorton v. Todd*, 793 F.Supp.2d 1171, 1185 (E.D. Cal. June 29, 2011) (court found the decision to appoint a neutral expert witness is discretionary; however, a magistrate judge is required to provide a reasoned explanation for denial of prisoner's motion for appointment of neutral expert).

Here, Plaintiff's request is premature—he simply asks that an expert psychologist be appointed without explaining how an expert witness would assist a trier of fact. Plaintiff makes

1 no effort to show why expert testimony is necessary or significantly useful in this case, and has  
2 produced no evidence to demonstrate that a serious dispute could be resolved through expert  
3 testimony. Plaintiff has not identified any circumstances or conditions that limit the effectiveness  
4 of the adversarial process, or any legal basis that would entitle him to special consideration.

5 Plaintiff also fails to explain whether he seeks a neutral expert or an advocate, although it  
6 appears he is seeking a psychological expert to support his case. If so, appointing an expert  
7 witness to assist Plaintiff would be an improper use of Rule 706(a). *Dillingham v. Garcia*, No.  
8 1:18-cv-00579-NONE-EPG (PC), 2020 WL 2770075, at \*2 (E.D. Cal. May 28, 2020) (denying  
9 request for appointment of counsel where it appeared plaintiff did not request a neutral witness)  
10 (citing *Faletogo v. Moya*, No. 12cv631 GPC (WMC), 2013 WL 524037, at \*2 (S.D. Cal. Feb. 12,  
11 2013) (Rule 706(a) “does not contemplate court appointment and compensation of an expert  
12 witness as an advocate for one of the parties”)).

13 Finally, regarding Plaintiff’s motion for the appointment of an investigator, Section 1915  
14 of Title 28 of the United States Code authorizes federal courts to permit commencement of a suit  
15 without prepayment of fees and costs upon a showing of indigency and allows indigents who are  
16 unable to pay the entire filing fee upon filing to pay in installments. *See* 28 U.S.C. § 1915(a) &  
17 (b). However, § 1915 does not authorize or require federal courts to finance or subsidize a civil  
18 action or appeal by paying expert fees or other costs. *Hadsell v. Comm’r of IRS*, 107 F.3d 750,  
19 752 (9th Cir. 1997); *Dixon v. Ylst*, 990 F.2d 478, 480 (9th Cir. 1993). The expenditure of public  
20 funds on behalf of an indigent litigant is proper only when authorized by Congress. *See U.S. v.*  
21 *MacCollom*, 426 U.S. 317, 321 (1976); *Tedder v. Odel*, 890 F.2d 210, 211 (9th Cir. 1989).

22 Plaintiff has not shown any Congressional authority for the appointment and payment for  
23 a private investigator for him. *See Gaines v. Harbert*, No. 07cv1320-J(CAB), 2009 WL 1481327,  
24 at \*1 (S.D. Cal. May 27, 2009) (denying pro se prisoner's motion for appointment of investigator  
25 as Section 1915 does not require federal courts to pay expert fees or other costs); *Khademi v.*  
26 *South Placer Co. Jail*, No. 2:21-cv-1498 KJM DB P, at \*1 (E.D. Cal. Oct. 18, 2021) (“the court is  
27 aware of no authority permitting it to provide plaintiff [a state prisoner proceeding pro se] an  
28 investigator”).

1 In sum, Plaintiff is neither entitled to the appointment of counsel, nor to the appointment  
2 of an expert or an investigator.

3 **I. CONCLUSION AND ORDER**

4 For the reasons stated above, the Court HEREBY ORDER that:

- 5 1. Plaintiff's motion to set aside the information (Doc. 13) is DENIED; and  
6 2. Plaintiff's motion for the appointment of counsel, appointment of an expert, and  
7 appointment of an investigator (Doc. 14) is DENIED.

8  
9 IT IS SO ORDERED.

10 Dated: May 2, 2022

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE